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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \* \* \*

UNITE HERE HEALTH, acting by and  
through its designated fiduciary Matthew  
Walker; SOUTHERN NEVADA  
CULINARY & BARTENDERS PENSION  
TRUST, acting by and through its designated  
fiduciary Kim Gould,

Plaintiffs,

vs.

PARBALL CORPORATION, a Nevada  
corporation; CAESARS ENTERTAINMENT  
CORPORATION, a Delaware corporation;  
FLAMINGO LAS VEGAS OPERATING  
COMPANY, a Nevada corporation; JOHN  
DOES I-X, inclusive; ROE ENTITIES I-X,  
inclusive,

Defendants.

CASE NO.: 2:13-cv-00802-RCJ-NJK

**MOTION FOR PRELIMINARY**  
**INJUNCTION**

Date: N/A  
Time: N/A

The Plaintiffs, Trustees of UNITE HERE HEALTH (“Welfare Fund”) and the Southern Nevada Culinary & Bartenders Pension Trust (“Pension Fund”) (collectively the “Trusts” or “Plaintiffs”), by and through their attorneys, Christensen James & Martin, and pursuant to 29 U.S.C. § 1132(a)(3), Fed. R. Civ. P. 65 and Local Rule 7-2, hereby move this Court for its Order compelling Defendants to pay monies that are, without dispute, owed (and overdue) to the Trusts. Plaintiffs further move the Court for its Order requiring Defendants to timely submit monthly fringe benefit reports and to make timely contributions to the Trusts from the date of

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1 this Motion forward and during the period of any relevant collective bargaining agreement to  
2 which Defendants are bound.

3 This Motion is based upon the Memorandum of Points and Authorities filed herewith, the  
4 Exhibits and Declarations attached hereto, the pleadings and papers on file herein and upon any  
5 oral argument to be presented to the Court at the time of hearing.

6 DATED this 13th day of May, 2013.

CHRISTENSEN JAMES & MARTIN

8 By: /s/ Wesley J. Smith  
9 Wesley J. Smith, Esq.  
10 *Attorneys for Plaintiffs*

11 **MEMORANDUM OF POINTS & AUTHORITIES**

12 **I.**

13 **INTRODUCTION**

14 The purpose of this Motion is to stop an employer from breaching its obligations under a  
15 collective bargaining agreement, remedy contribution delinquencies, stop further injury to the  
16 Trusts and halt further delinquencies during the pendency of this case. Under the terms of a  
17 collectively bargained labor agreement, the Defendants are required to submit monthly  
18 contribution reports and fringe benefit contributions for each hour worked by their culinary and  
19 bartender employees, including employees working in subleased space (i.e. restaurants and other  
20 establishments). Plaintiffs contend that covered labor is being performed at a restaurant called  
21 Carlos'n Charlie's inside the Flamingo Hotel & Casino. The Defendants initially reported and  
22 paid contributions for work at this restaurant in compliance with their CBA obligations.  
23 However, the Defendants ceased reports and payments in August 2012. The Defendants do not  
24 dispute that the hours need to be reported and that contributions should have been paid.

25  
26 Plaintiffs seek an Order that: a) requires submission of reports of hours worked for all  
27 months August 2012 through current; b) requires prompt payment of monies that Defendants  
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1 agree are owed; and c) requires Defendants to timely report hours worked and to timely pay  
2 fringe benefit contributions owed going forward. It is necessary for the Court to grant this relief  
3 because the Plaintiffs have been unable to otherwise persuade the Defendants to cure the breach  
4 and the Trusts are being irreparably harmed. The Defendants have unequivocally refused to  
5 submit further reports and payments to the Trusts. The Defendants' continuing failure to  
6 perform the obligations required by the CBA constitute a continuing injury to the Trusts that can  
7 only be remedied by the issuance of an injunction.  
8

## 9 II.

### 10 STATEMENT OF FACTS

11 The Plaintiff Trusts are express trusts created pursuant to Section 302 of the Labor  
12 Management Relations Act of 1947 ("LMRA") as amended [29 U.S.C. § 186(c)] by written  
13 declarations of trust ("Trust Agreements") between the Culinary Workers Union, Local 226 and  
14 Bartenders Union, Local 165 ("Unions") and various employers and employer associations in the  
15 hotel-casino and entertainment industries in which the bargaining units of the Unions participate.  
16

17 Defendant Parball Corporation ("Parball") and/or Defendant Flamingo Las Vegas  
18 Operating Company ("Flamingo Op. Co.") operate and manage the Flamingo Hotel & Casino on  
19 South Las Vegas Boulevard. Defendant Caesars Entertainment Corp. ("Caesars") is the owner  
20 of Parball and Flamingo Op. Co. and maintains immediate direction and control over their  
21 business. Most importantly, Caesars maintains a centralized human resources and accounting  
22 unit for all Caesars properties, including the Flamingo. It appears that Caesars controls all  
23 finance and labor relations for the Flamingo through its subsidiaries Parball and/or Flamingo Op.  
24 Co.  
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26 The Defendants report and pay contributions to the Trusts pursuant to a collective  
27 bargaining agreement ("CBA") with the Unions for the Flamingo Las Vegas. A true and correct  
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1 copy of the CBA is attached hereto as **Exhibit 1**. By executing the CBA, the Defendants agreed  
2 to be bound by its terms and conditions, and by the terms and conditions of the Trust  
3 Agreements.

4 Under the Employee Retirement Income Security Act of 1974 (“ERISA”) [29 U.S.C.  
5 §1001 et seq.], the LMRA, CBA and Trust Agreements, the Defendants are obligated to submit  
6 written reports to the Trusts on a timely basis showing the identities of their employees  
7 performing work covered by the CBA and the number of hours worked by or paid to these  
8 employees. Further, they are obligated to timely pay fringe benefit contributions to the Trusts on  
9 a monthly basis and at specified rates for each hour worked by or paid to the employees covered  
10 by the CBA. The monthly reports and corresponding contribution payments must be submitted  
11 to the Trusts at their administrative offices on or before the fifteenth (15th) day of each month  
12 following the work month in which hours of work covered by the CBA were performed, i.e. the  
13 report and contributions for the October 2012 work month were due on or before November 15,  
14 2012.

15 Pursuant to Article 29 of the CBA, the Defendants agreed that work covered by the CBA  
16 could not be performed under any sublease, subcontract or other such agreement unless the terms  
17 of the lease, contract or other agreement specifically states that all such shall be performed only  
18 by members of the Flamingo’s bargaining unit and that the Defendants exercise full control of  
19 the terms and conditions of employment of all such employees. The Defendants lease a portion  
20 of its space at the Flamingo for the operation of the Carlos’n Charlie’s restaurant. The  
21 provisions of Article 29 apply to all operations on the Flamingo premises, including work  
22 performed in the Carlos’n Charlie’s restaurant.

23 Carlos’n Charlie’s opened for business sometime in March 2012. The Defendants  
24 reported and contributed to the Trusts for work performed at the restaurant from the first date of  
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1 work until August 2012. At that point, the Defendants ceased reporting and contributing for  
2 work at the restaurant, yet the restaurant continues to operate to this date and covered labor  
3 continues to be performed on the premises. It seems as though the Defendants believe that they  
4 no longer have the obligation to report and pay for work performed at Carlos'n Charlie's.  
5 Because the Defendants ceased reporting and paying the contributions, there is a known  
6 delinquency owed to the Trusts of approximately \$310,000 for unpaid contributions through the  
7 February 2013 work month. *See* summary of amounts owed, attached hereto as Exhibit 2. An  
8 additional \$90,000 in unpaid contributions is estimated to be owed for the March and April 2013  
9 work months. Delinquencies will continue to accrue every day. The Defendants claim that they  
10 do not have responsibility for this delinquency and that the Trusts should accept payment from  
11 the restaurant directly, even though there is not a signed labor agreement or other contractual  
12 relationship with the restaurant. This is a direct violation of the CBA. All of the Plaintiffs'  
13 attempts to correct this belief and to stop the violations of the CBA have been futile. Plaintiffs  
14 believe that the Defendants will accrue additional delinquencies and irreparably harm the Trusts  
15 and their beneficiaries if a preliminary injunction is not issued.

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17  
18 The Trusts seek an order from this Court requiring:

19 a) Defendants to pay all past due amounts, comprising past due principal contributions  
20 through the date of the issuance of the injunction, accrued interest and liquidated damages for  
21 late payment;

22 b) Requiring the Defendants to timely and accurately remit reports *and* payments to the  
23 Trusts for all employees performing labor covered by the CBA at the Carlos'n Charlie's  
24 restaurant no later than the fifteenth (15th) day of the month following the month in which the  
25 work was performed; and  
26  
27  
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1 c) Defendants ensure that any and all violations of the CBA are appropriately addressed  
2 and will not continue in the future.

### 3 III.

### 4 ARGUMENT

5 The purpose of ERISA was to stabilize the rights and liabilities involved in  
6 benefit plans established under collective bargaining agreements. Section 2 of  
7 ERISA states, inter alia, that it is the declared policy of ERISA to protect  
8 participants of these plans by providing them with legal remedies, sanctions and  
9 access to federal courts to secure redress for violations of ERISA. . . . Thus, on  
10 the basis of the plain language of the statute and the attendant legislative history,  
we hold that section 502(a)(3) is unambiguous evidence of Congress' express  
intent to permit federal courts to issue injunctions.

11 *Laborers Fringe Benefit Funds-Detroit & Vicinity v. Nw. Concrete & Constr., Inc.*, 640 F.2d  
12 1350, 1352 (6th Cir. 1981). The Trusts bring the instant Motion to accomplish the stated  
13 purposes of ERISA by obtaining an injunction requiring Defendants to report and pay monthly  
14 fringe benefit contributions required by the CBA, Trust Agreements and ERISA. This type of  
15 relief is frequently granted by the federal courts in ERISA litigation under 29 U.S.C. §  
16 1132(a)(3). *See, e.g., Anthony v. Texaco, Inc.*, 803 F.2d 593, 598 (10th Cir. 1986) (*citing*  
17 *Laborers Fringe Benefit Funds v. Nw. Concrete & Constr.*, 640 F.2d 1350 (6th Cir.1981); *Van*  
18 *Drivers Union Local No. 392 v. Neal Moving & Storage*, 551 F.Supp. 429 (N.D. Ohio 1982));  
19 *Mingoia v. Crescent Wall Sys.*, 2004 WL 1885952, \*6-7 (S.D.N.Y. Aug. 23, 2004) ("In light of  
20 Defendants' past failures to make required contributions . . . permanent injunctive relief is  
21 justified . . . . Accordingly, Defendants are permanently enjoined from violating the employee  
22 benefit fund contribution provisions of the Trade Agreements."); *Mason Tenders Dist. Council v.*  
23 *Envirowaste & Transcontractors, Inc.*, 1999 WL 370667, \* 3 (S.D.N.Y. June 7, 1999) (granting  
24 prospective injunctive relief to plaintiffs who sought "to enjoin defendants from committing any  
25 further [ERISA] violations in the future.").

1 An injunction is exactly the type of relief that is needed in this situation where the  
2 Defendants have ceased abiding by the CBA and have become delinquent and do not seem to  
3 believe that they have any further obligation to the Trusts. Injunctive relief is permitted under  
4 ERISA “to enjoin a recalcitrant employer from failing to comply with the benefit payment  
5 provisions of a labor agreement.” *Int’l Painters & Allied Trades Indus. Pension Fund v. Davanc*  
6 *Contracting, Inc.*, 808 F.Supp.2d 89, 95 (D.D.C. 2011); (citing *Nw. Concrete*, 640 F.2d at 1351–  
7 52). If the Defendants are allowed to continue their course of action, then the amounts owed for  
8 contributions will grow by approximately \$45,000 per month, plus accrued interest and  
9 liquidated damages, and cause the Trusts to incur additional attorney’s fees and costs in  
10 collection (adding to the current delinquency which likely already exceeds \$400,000).  
11

12 The money owed for contributions (and the money Defendants are forcing the Trusts to  
13 spend on litigation) is used to create benefit eligibility for the Defendants’ employees and to  
14 provide benefits to all of the Trusts’ beneficiaries. Nonpayment jeopardizes the Trusts’ ability to  
15 perform their express purpose and function. It is therefore necessary for the Court to issue an  
16 injunction requiring the Defendants to pay the amounts that are owed and to timely submit their  
17 reports and payments to the Trusts going forward. In the absence of such an injunction, the  
18 increasing losses to the Trusts will threaten the welfare and pension benefits on which the  
19 Defendants’ employees and others depend, and the Trusts’ ability to fully collect the  
20 delinquencies asserted in this Case will dramatically decrease.  
21

22  
23 A. ERISA Specifically Entitles Plaintiffs to Injunctive Relief.

24 Under ERISA, the Trusts are entitled to an injunction requiring the Defendants to pay all  
25 delinquent and future contributions to the Trusts. The remedial provisions of 29 U.S.C.  
26 §1132(g)(2)(E) allow the Trusts to obtain “such other...equitable relief as the court deems  
27 appropriate” in addition to recovery of unpaid fringe benefit contributions, liquidated damages,  
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1 interest, attorney's fees and court costs. In addition, 29 U.S.C. § 1132(a)(3) provides that a court  
2 may grant "appropriate equitable relief" as part of relief sought in civil actions "to enjoin any act  
3 or practice which violates any provision of this title or the terms of the plan." Equitable relief  
4 available under the statute includes injunctive relief. *See, e.g., Sheet Metal Workers' Int'l Ass'n*  
5 *v. W. Coast Sheet Metal Co.*, 954 F.2d 1506 (9th Cir. 1992) (affirming injunction in part); *Cal.*  
6 *Serv. Employees Health & Welfare Trust Fund v. Adv'd Bldg. Maint.*, 42 Employee Benefits Cas.  
7 2841, 2007 WL 3232444 \*9, 13 (N.D. Cal. 2007) (modifying previous injunction requiring  
8 benefits to be paid and granting injunction prohibiting payment of extraordinary compensation to  
9 management until benefits are paid); *see also Gould v. Lambert Excavating, Inc.*, 870 F.2d 1214  
10 (7th Cir. 1989) (granting injunction requiring employer to make delinquent and future  
11 contributions); *N. Cal. Glaziers v. Wolter*, 2009 WL 1458272, \*3 (N.D. Cal. 2009) ("Under 29  
12 U.S.C. § 1132(g)(2)(E), this Court is authorized to award whatever equitable relief it deems  
13 appropriate. The Court GRANTS Plaintiffs' request for injunctive relief."); *Sheet Metal Workers*  
14 *Nat'l Health Fund v. Cunningham*, 2011 WL 1257822 (M.D. Tenn. 2011) (granting preliminary  
15 injunction requiring employer to pay monthly fringe benefit contributions).

16 Injunctive relief is permitted under ERISA "to enjoin a recalcitrant employer from failing  
17 to comply with the benefit payment provisions of a labor agreement." *Davanc Contracting, Inc.*,  
18 808 F.Supp.2d at 95; (citing *NW. Concrete*, 640 F.2d at 1351-52). These and numerous similar  
19 case opinions show that an injunction requiring the payment of past due, presently owed, or  
20 future contributions is precisely the type of relief contemplated by Congress to "enjoin" an "act  
21 or practice which violates...the terms of the plan." This Court has granted injunctive relief to the  
22 Plaintiffs in similar circumstances before. *See Hotel Employees & Rest. Employees Int'l Union*  
23 *Welfare Fund v. M.R. Whitsett, Inc.*, No. 09-01746, Docket No. 43 (D. Nev. Oct. 6, 2010); *Unite*  
24  
25  
26  
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1 *Here Health v. Tinoco's Kitchen, LLC*, 2012 WL 5511639, 194 L.R.R.M. (BNA) 3163, 54  
2 Employee Benefits Cas. 2012 (D. Nev. 2012).

3 Here, the Defendants have refused to submit reports or payments to the Trusts. The  
4 enforcement of the Defendants' Section 1145 obligation "to make contributions . . . in  
5 accordance with the terms . . . of such plan or such agreement" can only effectively be ensured  
6 through injunctive relief requiring timely reports and payments. This action has been brought, in  
7 part, to enjoin practices that violate both ERISA and the terms of the CBA, and it meets the  
8 requirements for injunctive relief under 29 U.S.C. § 1132(a)(3).

9  
10 In view of the foregoing provisions, this Court should issue its Injunction in favor of the  
11 Trusts and against the Defendants, enjoining Defendants from further violations of the CBA and  
12 requiring payment of unpaid contributions during the pendency of this action. By issuing such  
13 an injunction, the Court will effectively ensure that the sums owed to the Trusts by Defendants  
14 will not continue to grow while this case is pending. The injunction should require payment  
15 within fifteen (15) days of the entry of the Court's Order hereunder, or within some other  
16 reasonable time period set by the Court.

17  
18 B. The Requirements for the Issuance of an Injunction are Met.

19 Rule 65 of the Federal Rules of Civil Procedure provides that federal courts may grant  
20 injunctions on terms as are deemed appropriate. Congress also provided specific statutory  
21 authority to permit federal courts to issue injunctions in connection with ERISA civil actions,  
22 like this one. The Court has ample authority to grant the Plaintiffs the relief they seeks.

23  
24 1. Relief of this Type has Historically been Granted in Similar Situations.

25 Plaintiffs are not requesting an anomalous form of relief. Similar relief was recently  
26 granted in other cases in this District to these very Plaintiffs. In *Hotel Employees & Rest.*  
27 *Employees Int'l Union Welfare Fund v. M.R. Whitsett, Inc.*, No. 09-01746, Docket No. 43 (D.  
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1 Nev., Oct. 6, 2010) and *Unite Here Health v. Tinoco's Kitchen, LLC*, 2012 WL 5511639, 194  
 2 L.R.R.M. (BNA) 3163, 54 Employee Benefits Cas. 2002 (D. Nev. 2012), the Plaintiffs brought  
 3 similar actions to recover unpaid fringe benefits. In both cases, the defendant employers failed to  
 4 pay contributions.

5  
 6 In the *Whitsett* and *Tinoco's* cases, Plaintiffs sought injunctions requiring employers to  
 7 report and pay. In *Whitsett*, Judge Jones issued a ruling from the bench granting a preliminary  
 8 injunction, but the case was then re-assigned to Judge Navarro, who conducted a separate and  
 9 additional hearing before entering a written Order granting the injunction. In *Tinoco's*, Judge Du  
 10 granted a very similar motion involving the same CBA language (Article 29) and issued an order  
 11 enjoining both a restaurant/lessee and a casino hotel/lessor from failing to pay contributions to  
 12 the Plaintiffs. The same situation is present here, damaging the very same Plaintiffs in the very  
 13 same way, and a similar order is warranted here.

14  
 15 2. An Injunction Should Issue Under a Relaxed Standard Because Plaintiffs Can  
 16 Prove a Substantial Likelihood that a Statutory Violation has Occurred.

17 The Defendants' continuing failure to comply with the terms of the CBA weighs strongly  
 18 in favor of issuing an injunction. Federal courts have recognized that employee benefit statutes  
 19 are to be liberally construed in order to accomplish the purposes for which they were enacted.  
 20 *See, e.g., Golden State Bottling Co. v. NLRB*, 414 U.S. 168, 182 n.5 (1973). Consistent with this  
 21 principle, courts have held that where a statute authorizes a court to enjoin a statutory violation,  
 22 traditional prerequisites for injunctive relief do not apply. In order to obtain injunctive relief in  
 23 such a situation a plaintiff need only prove a substantial likelihood that a statutory violation has  
 24 occurred. *See Wright, Miller & Kane, Federal Practice and Procedure: Civil* § 2948.4 (2d ed.  
 25 2002).

1 ERISA [29 U.S.C. § 1145] states “Every employer who is obligated to make  
2 contributions to a multi-employer plan under the terms of the plan or under the terms of a  
3 collectively bargained agreement shall...make such contributions in accordance with the  
4 terms...of such plan or such agreement.” Because ERISA specifically provides for injunctive  
5 relief, courts have held that no showing of factors such as irreparable harm is required of an  
6 ERISA plaintiff seeking such relief. *See, e.g., Trs. ex rel. Teamsters Ben. Trust v. Casey’s Office*  
7 *Moving & Serv., Inc.*, 2007 WL 1031320 (N.D. Cal. 2007) (granting injunction requiring  
8 employer to comply with CBA obligations as appropriate relief under 29 U.S.C. § 1132, without  
9 discussing traditional requirements for injunctive relief).

11 In *N. Cal. Glaziers v. Wolter*, 2009 WL 1458272 (N.D. Cal. 2009), an employee benefit  
12 trust fund was attempting to collect delinquent fringe benefit contributions from a signatory  
13 employer. The Trust Fund sought an injunction from the Court requiring the employer to submit  
14 to an Audit, which the employer had refused to do. The Court granted the injunction as a means  
15 of enforcing the express terms of a CBA. Here, the Plaintiffs seek similar equitable relief.

17 The Defendants have not made required contributions in accordance with the terms and  
18 conditions of the CBA. The Trusts have obtained hours worked and determined that covered  
19 hours of work have been performed. Violations of 29 U.S.C. § 1145 have unquestionably  
20 occurred. Undisputed facts demonstrate that the Defendants have failed to timely pay  
21 obligations. These failures to comply with the CBA and the clear requirements of federal statutes  
22 show that the Plaintiffs have reasonable grounds to believe that future violations are also likely.  
23 Plaintiffs are entitled to an injunction in order to help prevent future violations.

25 29 U.S.C. § 1132(a)(3) was enacted specifically to permit trusts like the Plaintiffs to  
26 enjoin practices like the Defendants’ habitual practice of nonpayment. The Court should issue a  
27 preliminary injunction requiring the Defendants a) to timely pay all contributions that are owed  
28

1 and fall due while this case is pending, and b) to promptly pay the arrears that are admittedly  
 2 owed.

3 3. Even if the Classic Standard Applies, an Injunction Should Still Issue.

4 Even if all of the traditional prerequisites for issuance of an injunction apply, they are met  
 5 in this case. Before granting injunctions, some courts have required ERISA trusts to prove some  
 6 combination of the following prerequisites: 1) threat of irreparable harm, 2) a showing that the  
 7 harm avoided by the injunction outweighs any harm caused by the injunction (balancing of  
 8 harm), 3) likelihood of success on the merits, and 4) a showing that issuance of the injunction  
 9 will not offend public policy. When balancing these interests, the primary prerequisites for the  
 10 issuance of an injunction are: 1) that plaintiff's threatened injury be irreparable; and 2) that  
 11 public policy will not be offended by the issuance of the injunction. *Van Drivers Union Local*  
 12 *No. 392 v. Neal Moving & Storage*, 551 F.Supp. 429, 431 (D. Ohio 1982) (*citing NW.*  
 13 *Concrete*, 640 F.2d 1350). Even under such a restrictive approach, the Plaintiffs are entitled to  
 14 an injunction.  
 15  
 16

17 a. *The Defendants' Actions Are Causing Irreparable Harm.*

18 The Defendants' failure to pay required contributions threatens benefits offered by the  
 19 Trusts to the Defendants' employees and all beneficiaries of the Trusts. The Pension Trust exists  
 20 to provide pension benefits to employees who qualify for them. The Welfare Trust exists  
 21 primarily to act as a health plan, paying health benefits to medical providers on behalf of its  
 22 participants. These benefits are placed in jeopardy when employers like the Defendants fail to  
 23 pay required contributions to the Trusts. The Seventh Circuit Court of Appeals has  
 24 acknowledged this, noting that:  
 25

26 [Multi-employer] plans rely on documents to determine the income they can  
 27 expect to receive, which governs their determination of levels of benefits . . .  
 28 Once they promise a level of benefits to employees, they must pay even if the

1 contributions they expected to receive do not materialize . . . If some employers  
 2 do not pay, others must make up the difference in higher contributions, or the  
 3 workers will receive less than was promised. Costs of tracking down reneging  
 employers and litigation also come out of money available to pay benefits.

4 *Cent. States, Se. & Sw. Areas Pension Fund v. Gerber Truck Serv., Inc.*, 870 F.2d 1148, 1151  
 5 (7th Cir. 1989) (en banc).

6 As this Court has previously stated, “[d]elinquent contributions damage the  
 7 Funds’ ability to meet their continuing fiduciary duty to provide benefits to  
 8 employees and thus endanger not only employees, but also the Funds’ financial  
 9 security.” *Bd of Trs. of Ohio Laborers' Fringe Ben. Programs v. Maint. Unlimited*  
*Inc.*, No. 2:06-CV-600, 2006 WL 2988376, at \*2 (S.D. Ohio Oct. 17, 2006).  
 S.D.Ohio,2011.

10 *Bd. of Trs. for the Ohio Laborers’ Fringe Benefit Programs v. Savcon, Inc.*, 2011 WL 2633184  
 11 (S.D. Ohio) (unreported); *see also Bricklayers & Allied Craftsmen Health & Welfare Fund-Terre*  
 12 *Haute v. Thomas Williamson Constr.*, 2010 WL 1948231 (S.D. Ind. 2010) (enjoining employer  
 13 from failing to make timely payment to ERISA benefit funds where contributions were required  
 14 by the terms of a collective bargaining agreement, the financial soundness of the welfare plan  
 15 was jeopardized by the employer’s continuing delinquencies, all of which showed a likelihood of  
 16 irreparable harm if injunctive relief were not to issue).

18 The Ninth Circuit Court of Appeals has held that an injunction is proper in this factual  
 19 circumstance because the potential loss of benefits alone satisfies the prerequisite that irreparable  
 20 harm be shown. *See Beltran v. Myers*, 677 F.2d 1317, 1322 (9th Cir. 1982) (“Plaintiffs have  
 21 shown a risk of irreparable injury, since enforcement of the California rule may deny them  
 22 needed medical care. That is a sufficient showing.”); *accord Meehan v. Gristede’s Supermarkets,*  
 23 *Inc.*, No. 95–2104, 1997 WL 1097751, \*3 (E.D.N.Y. Sep. 25, 1997) (loss of health insurance  
 24 benefits may irreparably harm employees and their families); *Whelan v. Colgan*, 602 F.2d 1060,  
 25 1062 (2d Cir.1979) (“[T]he threatened termination of benefits such as medical coverage for  
 26 workers and their families obviously raised the spectre of irreparable injury.”).  
 27  
 28

1 Defendants' failure to pay required contributions violates federal law and it jeopardizes  
2 the availability of funds to pay for medical care for thousands of participating employees and  
3 their dependents. To date, the Welfare Fund has not chosen to withdraw benefits from the  
4 culinary and bartender employees of Carlos'n Charlie's, but the delinquency owed to the Welfare  
5 Fund alone now likely exceeds \$300,000 through the April 2013. By the time this Motion is  
6 decided, the delinquency will be much more. The Welfare Fund simply cannot continue to  
7 provide benefits under current circumstances indefinitely. Unless Defendants pay as required, an  
8 increase in the contribution rates required of other employers may be necessary, and the health  
9 benefits offered to the employees of Carlos'n Charlie's may be lost. Thus, the harm caused by  
10 the Defendants' failure to pay contributions could extend to others beyond the parties to this  
11 action. The injunction the Plaintiffs seek will aid in ending, or at least in limiting such harm.  
12

13  
14 b. *Plaintiffs Will Suffer Harm If the Status Quo Is Maintained; Defendants*  
15 *Will Suffer No Legally-Cognizable Harm If an Injunction Issues.*

16 The only potential harm an injunction would cause to the Defendants is not "harm" at all,  
17 but an enforcement of what is already required under the CBA and federal law [29 USC § 1145].  
18 The Defendants would simply be ordered to resume an obligation they formerly fulfilled (until  
19 August 2012) and timely pay their obligations to the Trusts. The Defendants acknowledged their  
20 obligations under the CBA each time they submitted reports to the Trusts from March 2012  
21 through July 2012. Additionally, they have acknowledged that the CBA remains in force each  
22 time they have submitted reports and payments for the other employees performing work at the  
23 Flamingo. They cannot unilaterally decide that obligation to report and pay for the Carlos'n  
24 Charlie's employees ended.  
25

26 The Trusts have already suffered enough harm. If the Defendants are allowed to continue  
27 to disregard their obligations to pay, then the Trusts will continue to be harmed by delinquencies  
28

1 that will not only remain unpaid, but will apparently continue to grow with little likelihood of  
 2 payment. This harm can easily be avoided through issuance of the injunction Plaintiffs seek.  
 3 The harm avoided by the issuance of an injunction (including the potential loss of employee  
 4 benefits) is highly relevant, very real, and it undeniably outweighs any “harm” that an injunction  
 5 forcing the Defendants to live up to their obligations under the CBA could possibly cause.  
 6

7 c. *The Plaintiffs Are Very Likely to Prevail on the Merits of Their Case.*

8 The Trusts are likely to prevail in establishing that Defendants are in violation of ERISA.  
 9 The CBA remains in effect, as demonstrated by Defendants’ continued reporting to the Trusts for  
 10 the other employees at the Flamingo. The fact is that the Defendants have not paid amounts they  
 11 owe for the Carlos’n Charlie’s employees. ERISA collection actions such as this are routine and  
 12 straightforward. There is little reason to believe that Defendants can successfully mount a  
 13 defense to Plaintiffs’ claims.  
 14

15 d. *The Injunction Sought by Plaintiffs Will Further Public Policy.*

16 The requested injunction will further the public policy underlying ERISA. 29 U.S.C. §  
 17 1001 sets forth Congress’ findings in enacting ERISA. At section 1001(a), Congress stated that  
 18 ERISA employee “benefit plans affect interstate commerce,” that “the continued well-being and  
 19 security of millions of employees and their dependents are directly affected by these plans; [and]  
 20 that they are affected with a national public interest.” Congress has expressly found that the  
 21 public has an interest in ensuring that ERISA Trusts are fully-funded. There could hardly be a  
 22 stronger policy statement in favor of issuing the requested injunction. As one court put it:  
 23

24 *In Central States Southeast and Southwest Areas Pension Fund v. Hitchings*  
 25 *Trucking, Inc.*, 472 F.Supp. 1243, (E.D. Mich.1979), the court noted that ERISA  
 26 was intended to stabilize the rights and liabilities of pension plans established by  
 27 collective bargaining. The continued stability of such a plan is precisely what is at  
 28 stake in the present case. Congressional intent and public policy are important  
 considerations which guide this Court in determining the necessity of the  
 injunction in the instant case. It is clear that “stability and protection require

1 assurance of adequate funding and the prevention of arbitrary termination  
 2 rights.” *Cent. States, Se. & Sw. Areas Pension & Health & Welfare Funds v.*  
*McNamara Motor Express, Inc.*, 503 F.Supp. 96 (W.D.Mich.1980).

3 *Van Drivers Union Local No. 392 v. Neal Moving & Storage*, 551 F.Supp. 429, 432 (D.C. Ohio  
 4 1982). An injunction that forces a delinquent employer to pay (as contractually obligated and  
 5 statutorily required) cannot possibly hinder public policy, but rather promotes public policy by  
 6 ensuring that the Trusts are properly funded, as explicitly intended by Congress.  
 7

#### 8 IV.

#### 9 CONCLUSION

10 All prerequisites for issuance of an injunction have been met in this Case. The Court  
 11 should issue its Injunction in favor of the Trusts and against the Defendants ordering (i) that  
 12 Defendants accurately report and remit contributions to the Trusts for all employees performing  
 13 labor covered by the CBA at the Carlos’n Charlie’s restaurant no later than the fifteenth (15th)  
 14 day of the month following the month in which the work was performed; (ii) that Defendants pay  
 15 to the Trusts all unpaid contributions and related damages; and (iii) that Defendants ensure that  
 16 any and all violations of the CBA as described herein are appropriately addressed and will not  
 17 continue in the future.  
 18

19 DATED this 13th day of May, 2013.  
 20

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